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In re Application of
Schlegel et al
Application No.: 09/508,301
PCT No.: PCT/EP98/05765
Int. Filing Date: 10 September 1998
Priority Date: 10 September 1997
Attorney's Docket No.: MFA-11902/04
For: METHOD AND DEVICE FOR
PROCESSING FRESH MEAT

DECISION

ON PETITION

UNDER 37 CFR 1.47(a)

This decision is in response to applicant's "PETITION FOR FILING PATENT APPLICATION BY OTHER THAN ALL THE INVENTORS- 37 CFR 1.47(a)" filed on 10 October 2000 that seeks the acceptance of the application without the signature of the inventor Jurgen Schlegel.

BACKGROUND

On 10 September 1998, applicant filed international application PCT/EP98/05765, which claimed an earliest priority date of 10 September 1997. A copy of the international application was transmitted to the United States from the International Bureau on 18 March 1999.

On 09 March 2000, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1). No oath or declaration was submitted at such time.

On 08 May 2000, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the oath or declaration must be furnished within the period set forth in order to complete the requirements for acceptance under 35 U.S.C. 371. The notification also indicated that a surcharge for filing the oath or declaration later than 30 months from the priority date as stipulated by 37 CFR 1.492(e) will be required. The notification set a one month time limit or 31 months from the priority date for the application, whichever is later to respond.

On 10 October 2000, applicant filed the present petition under 37 CFR 1.47(a). Filed with the present petition were, inter alia: (1) a "DECLARATION AND POWER OF ATTORNEY" executed by inventors Mr. Hubert Verhaag and Mr. Wilfried Schworer on their behalf, as well as on behalf of non-signing inventor, Jurgen Schlegel; (3) a "DECLARATION OF FACTS IN SUPPORT OF FILING ON BEHALF OF OMITTED INVENTOR (37 C.F.R. § 1.47(a))" executed by Mr. Hubert Verhaag.

DISCUSSION

Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

Where a refusal of the inventor to sign the application paper is alleged, the circumstances of the refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings and oath or declaration) to the nonsigning inventor for signature.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration."

Notwithstanding the statements to the contrary, it does not appear that Hubert Verhaag made a bona fide attempt to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing joint inventor Mr. Jurgen Schlegel, and that after presentation of the complete copy Mr. Schlegel refused to sign the Declaration. Although Mr. Verhaag declares that he personally approached Mr. Schlegel, while they were both attending the MEFA fair in Zurich, Switzerland, and requested Mr. Schlegel to sign the assignment and declaration and power of attorney but that Mr. Schlegel refused. See Verhaag's Declaration at ¶ 10 and 11. However, these forms do not satisfy the requirement of section 409.03(d) because a complete copy of the application (i.e., specification, including claims and drawings) does not appear to have been presented to Mr. Schlegel for reviewing and signing.

Accordingly, the current record does not support the premise that Mr. Schlegel's conduct constitutes refusal since a *bona fide* attempt was not made to present a copy of the application papers (specification, including claims, drawings and declaration) to Mr. Schlegel for his signature at the MEFA fair in Zurich.

Consequently, at this time it can not be concluded that Mr. Schlegel had refused to sign the documents based on the evidence provided and the date the filed affidavit was signed.

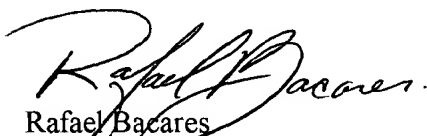
The petition fee of \$130.00 is being charged to Deposit Account No. 07-1180 as authorized in the transmittal letter of 09 March 2000 for a declaration submitted after thirty months from the priority date.


DECISION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.47(a) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)."

Any further correspondence with respect to this matter should be addressed to the Commissioner for Patents, Office of PCT Legal Administration, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office


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